

REMARKS

Claims 16-35, 38-65, 68-98, and 101-111 are now pending and stand rejected. Claims 112-141 are withdrawn from consideration. By this amendment, the scope of all the claims is amended. Applicant is submitting a Request for Continued Consideration ("RCE") with this Preliminary Amendment. By this Preliminary Amendment, Applicant has amended the claims and demonstrates reasons why the claims pending here are distinct from the asserted art.

35 U.S.C. Section 103 Rejections

In paragraph 2 of the office action, the Examiner maintains the rejections of claims 16-42, 45-72, 75-105, 108-111 as unpatentable over Shavit et al. (US 4,799,156, hereinafter "Shavit") in view of Smith (US 5,450,123), and further in view of Lockwood (US 5,576,951, hereinafter "Lockwood"). In paragraph 3 of the office action, claims 43-44, 73-74, and 106-107 are rejected under 35 U.S.C. 103(a) as unpatentable over Shavit, Smith and Lockwood, as applied to claims 16, 45, and 77 above, and further in view of Donald et al. (U.S. 5,053,956).

Again, Applicant respectfully requests the Examiner to consider the recent standard for evaluating obviousness. The Supreme Court set this standard for evaluating obviousness in its recent decision (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007))) to be "expansive and flexible" and "functional." But, the standard is not controlling. Instead the various noted factors only "can" or "might" be indicative of obviousness based on the facts. The Supreme Court in *KSR* enunciated the following principles:

"[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill....[A] court must ask whether **the improvement is more than the predictable use of prior art elements according to their established functions.**

The Supreme Court in *KSR* also stated that:

a patent composed of several elements is not proved obvious merely by demonstrating that **each of its elements was independently known in the prior art.**

The Supreme Court in *KSR* has also stated that:

[o]ften, it will be necessary for a court **to look to interrelated teachings of multiple patents**; the effects of demands known to the design community or present in the market place.

Further, the Supreme Court stated in *KSR* that:

The Court [in *United States v. Adams*, 383 U.S. 39, 51-52 (1966)] relied upon the corollary principle **that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.**

Even with this recent standard, Applicant notes that the Examiner continues to combine at least three if not four references with teachings that are not interrelated but instead teach away from the combination suggested by the Examiner because they are simply independently known in the prior art. The Examiner is respectfully requested to reconsider her rejections based on the arguments presented here.

First, consider the primary reference, Shavit, with respect to which the Examiner indicates the following:

Shavit differs from claims 16-42, 45-72, 75-105, 108-111 in that it does not specify a dynamic video system. However, Smith teaches the desirability of including a camera at a representative terminal so that direct, real-time, point-to-point video communication can take place between a customer and the representative (col. 3, lines 26-27; col. 4, lines 25-28; moving pictures are communicated via AT&T 2500 video telephone sets, col. 1, lines 27-28) such that it would have been obvious to an artisan of ordinary skill to incorporate such dynamic, full-motion video communication, as taught by Smith, within the system of Shavit in order to provide a real-time video as well as audio communication between the customer and representative. In this way, a more realistic face-to-face meeting can take place.

Further, Smith teaches the desirability of allowing buyer access to a vendor supplied video image stored in a video file server (video source and database 6) for enhancing sales communication with the use of video (col. 1, line 51 - col. 3, line 27) such that it would have been obvious to an artisan of ordinary skill to incorporate such use of

video, as taught by Smith, within the method of Shavit in order to allow a buyer to view the desired goods or services.

The combination of Shavit and Smith further differs from the claims in that although Smith provides for supplying customized information (col. 5, lines 48+), it does not specify storing in memory identification data of an interested buyer in association with a designated area of commercial interest. However, Lockwood teaches the desirability of having a central processor 222 select an appropriate vendor-supplied data source associated with the customer's request, col. 18, lines 51-54; col. 19, lines 52-53; col. 20, lines 36-39, for output to the customer as a high-resolution audio-visual presentation ; col. 18, lines 9-56; col. 19, lines 13-24, 52-57) such that it would have been obvious to an artisan of ordinary skill to incorporate such vendor selection, as taught by Lockwood, within the combination of Shavit and Smith in order to provide buyers with a more efficient means of selecting goods and services from a plurality of vendors by providing a customized audio/video presentations based on the buyer's area of interest. In this way, the buyer need not manually select each distributor from which information is desired.

First of all, in addition to not providing a dynamic video system (acknowledged by the Examiner), Shavit does not teach selectivity by a processor in the context of the claimed inventions. In Shavit, the IMM system does not selectively select vendors nor any data such as video data based on some criteria considered by the IMM system. In Shavit, one party to the transaction is specifically selected by the other party to the transaction. Shavit's system does not teach determining and selecting a vendor or vendor data (including video) related to an area of interest expressed by a prospective buyer from data provided by an appropriate vendor. The Examiner fails to recognize this major distinction and erroneously equates Shavit's system with the Applicant's system. The Examiner relies on Lockwood for teaching the desirability of having a central processor select an appropriate vendor, yet that cannot fill a void or need that is not even recognized by Shavit. In Shavit, one party to a transaction is already selected by the other party. There is no need or basis expressed in Shavit, which begs a combination with Lockwood and requires the central processor to select an appropriate vendor or relevant data. The desired vendor is already known to Shavit's buyer and indicated by the buyer. Accordingly, based on the current legal construct, Shavit provides no reason that would lead one of ordinary skill to

combine the two references in the manner that the Examiner suggests. Accordingly, the Examiner is requested to withdraw the rejection of the rejected claims.

The Examiner indicates that:

Shavit discloses a commercial transaction communication system (Interactive Market Management System 50), the system being adapted for use with an on-line computer service (Shavit provides for access to a variety of information sources and database providers, e.g. Dialog; col. 7, lines 9-15) comprising:

- an interface (personal computers 62, 64 and communication interface 79; col. 5, line 28 – col. 6, line 51);
- an audio system (interactive conversational service; col. 7, line 58 – col. 8, line 4);
- a text system (mailbox service, col. 8, lines 12-22; col. 11, line 52 – col. 12, line 18; transaction service, col. 12, line 42 – col. 14, line 21, facsimile service, col. 14, line 22);
- a storage memory (database stores subscriber data and request data; col. 7, lines 23-46; col. 25, lines 28-50);
- a control computer unit (central processor 80) utilizing request data entered by an active buyer to seek responses from a select vendor from a plurality of vendors (one or more Request for Quotations (RFQ's) **are entered by the buyer to seek bids from one or more distributors**; col. 13, lines 10-34) and directing an electronic mail message relating to the select vendor to the active buyer via the on-line computer service (system 50 provides email messages to each user, including bids in response to requests for particular goods or services input by the user, promotions, and other information of particular interest to buyers; col. 11, lines 52 – col. 12, line 26; col. 13, lines 25-27; col. 18, lines 44-49; col. 20, lines 2-39).

The text at column 13, lines 10-34, that is pointed to by the Examiner, discloses that a buyer may enter or modify a request for a bid by a buyer and the system prepares a bid by recalculating the price and the terms of the bid in order to submit an automatic bid. This does not satisfy the claimed invention (as amended) as defined by the claims here. Therefore, even if the Shavit is combined with the other references asserted by the Examiner, the combination would not result in the claimed inventions.

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Claims 43-44, 73-74, and 106-107 are distinct at least for the reasons by which the independent claims (16, 45, and 77) from which they depend are distinct. They recite elements not met by a combination of Shavit, Smith and Lockwood as demonstrated above.

Favorable allowance of all the rejected claims 16-35, 38-65, 68-98, and 101-111 is respectfully requested. In the event outstanding issues remain, the undersigned respectfully requests the Examiner to contact the undersigned.

Respectfully submitted,

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